

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tahira Delaine	Team: Team # 6	CCRB Case #: 200407662	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/06/2004 2:56 AM	Location of Incident: Flatbush Avenue and Avenue J	Precinct: 63	18 Mo. SOL 2/6/2006	EO SOL 2/6/2006	
Date/Time CV Reported Mon, 08/09/2004 1:09 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 08/09/2004 1:09 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Martinez	20291	922716	063 PCT
2. POM James Murphy	14857	926095	063 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Delens Cadichon	02408	927997	063 PCT
2. POF Olatutu Erinosho	24266	930104	063 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Martinez	Abuse: At Flatbush Avenue and Avenue J, PO Robert Martinez stopped and questioned § 87(2)(b)	
B.POM James Murphy	Abuse: At Flatbush Avenue and Avenue J, PO James Murphy stopped and questioned § 87(2)(b)	
C.POM Robert Martinez	Abuse: At Flatbush Avenue and Avenue J, PO Robert Martinez searched § 87(2)(b)	
D.POM James Murphy	Abuse: At Flatbush Avenue and Avenue J, PO James Murphy frisked § 87(2)(b)	
E.POM Robert Martinez	Abuse: At Flatbush Avenue and Avenue J, PO Robert Martinez arrested § 87(2)(b) and § 87(2)(b) and later at the 63rd Precinct stationhouse issued them summonses.	
F.POM Robert Martinez	Abuse: Inside the 63rd Precinct stationhouse, PO Robert Martinez did not obtain medical treatment for § 87(2)(b)	

Synopsis

On August 6, 2004 at approximately 2:56 AM, § 87(2)(b) and § 87(2)(b) were allegedly riding their bicycles in the street on Flatbush Avenue, Brooklyn when they were stopped by Officer Robert Martinez and Officer James Murphy on Flatbush Avenue and Avenue J because they fit the descriptions of burglary suspects. (*Allegations A and B*) § 87(2)(b) and § 87(2)(b) were asked where they were coming from and where they were going and for identification. Officer Martinez searched § 87(2)(b) as Officer Murphy frisked § 87(2)(b) (*Allegations C and D*) § 87(2)(b) was wearing a backpack and Officer Martinez asked him what was in his backpack. § 87(2)(b) handed his backpack to Officer Martinez and it was searched. Officer Martinez called for back up and a few minutes later two marked patrol cars responded to the scene. § 87(2)(b) and § 87(2)(b) were asked to face front and a show-up was conducted. Immediately after the show-up, Officer Martinez told § 87(2)(b) and § 87(2)(b) that they were under arrest. (*Allegation E*) § 87(2)(b) and § 87(2)(b) were transported to the 63rd Precinct stationhouse and held in a holding cell for an hour and a half. While being held in the cell, § 87(2)(b) informed Officer Martinez several times that he needed to take his medication. Officer Martinez asked § 87(2)(b) to give him a few minutes. § 87(2)(b) never received medical treatment. (*Allegation F*) § 87(2)(b) and § 87(2)(b) were released with summonses § 87(2)(b) (*Allegation E*)

§ 87(2)(b), § 87(2)(g)

Summary of Complaint

On August 9, 2004, § 87(2)(b) filed his complaint with the CCRB via telephone. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) a § 87(2)(b) year old black man, was interviewed at the CCRB on August 23, 2004. (Encl. 5 (a-e)) § 87(2)(b) lives in California and was in New York visiting with his sister at the time of the incident. On August 6, 2004 at approximately 2:56 AM, § 87(2)(b) and his cousin § 87(2)(b) were riding their bicycles in the street on Flatbush Avenue, Brooklyn, back to § 87(2)(b)'s sister's house at § 87(2)(b), Brooklyn, which was approximately four to five miles away. He and § 87(2)(b) had just returned from the twenty-four hour Rite Aid Pharmacy located on Flatbush Avenue. § 87(2)(b) was wearing dark colored sweat pants with a gray or black tee shirt and white sneakers and § 87(2)(b) was wearing dark blue sweat pants with a yellow long sleeved shirt.

At approximately 2:56 AM, on Flatbush Avenue and Avenue J, Officer Robert Martinez and his partner, who was later identified as Officer James Murphy, pulled up behind § 87(2)(b) and § 87(2)(b) in a marked RMP, causing § 87(2)(b) to go onto the sidewalk. § 87(2)(b) and § 87(2)(b) were told to stop and get off of their bicycles. (*Allegations A and B*) Both men complied. The officers exited the vehicle. Officer Martinez approached § 87(2)(b) as Officer Murphy approached § 87(2)(b). Officer Martinez asked § 87(2)(b) where he was coming from and where was he going at that hour of the morning. When § 87(2)(b) told Officer Martinez the address where he was going, Officer Martinez asked him why he was so far away. § 87(2)(b) explained to Officer Martinez that he and his cousin wanted to ride their bikes. Officer Martinez asked § 87(2)(b) for identification.

Officer Martinez searched § 87(2)(b)'s front pockets and he noticed a scar on § 87(2)(b)'s left arm. (*Allegation C*) Officer Martinez asked § 87(2)(b) if the scar on his arm was from a gunshot wound and § 87(2)(b) told him that the scar was a result of a procedure where a tube was placed in his arm for dialysis. § 87(2)(b) further explained to Officer Martinez that he was transplant recipient and needed to take his medications on a schedule to avoid organ rejection. § 87(2)(b) told Officer Martinez that he was scheduled to take his medications shortly. He never told Officer Martinez a specific time at which he

needed to take his medication, although § 87(2)(b) should have taken it a few hours before. During § 87(2)(b)'s CCRB interview, he was wearing a short-sleeved shirt and his scar was very noticeable.

§ 87(2)(b) was wearing a backpack and Officer Martinez asked him what was inside his backpack. § 87(2)(b) handed his backpack to Officer Martinez, who opened it and searched inside. § 87(2)(b) had a sweatshirt and a Rite Aid bag with his purchases. § 87(2)(b) stated that the only interaction he had with Officer Murphy was when he and Officer Martinez were looking inside his backpack and Rite Aid bag and Officer Murphy stated that the shaving gel that he purchased was good. § 87(2)(b) responded that he wanted to get home so that he could use the shaving gel. At this time, Officer Martinez radioed for an additional unit.

A few minutes later two officers responded in a marked RMP. The officers were later identified as Officer Deles Cadichon and Officer Olatutu Erinoshon. § 87(2)(b) did not interact with either of these officers. Soon thereafter, a third marked RMP arrived to the scene. The officers never exited the vehicle; instead, they turned on bright lights, making it impossible to see inside the vehicle. § 87(2)(b) and § 87(2)(b) were asked to stand at the back of Officer Martinez's vehicle and face the front. After a few minutes, the marked RMP turned off their lights and drove away. Officer Martinez approached § 87(2)(b) and told him that he and § 87(2)(b) were under arrest. (*Allegation E*) § 87(2)(b) asked Officer Martinez why he was being arrested and Officer Martinez replied that he did not need to know the reason now. Officer Martinez handcuffed § 87(2)(b). One of bicycles was placed in the trunk of Officer Martinez's vehicle and the other was placed in the trunk of Officer Cadichon's and Officer Erinoshon's vehicle. Officer Martinez and his partner transported § 87(2)(b) and § 87(2)(b) to the 63rd Precinct stationhouse.

At the stationhouse, two Polaroid pictures each were taken of § 87(2)(b) and § 87(2)(b) then they were placed in a holding cell. At this time, § 87(2)(b) informed Officer Martinez that he needed to take his medication. Officer Martinez told § 87(2)(b) to tell him when he needed to take his medication and it would be arranged for him to be taken to the hospital for medical treatment. He told § 87(2)(b) to give him five minutes and left the holding cell area. Officer Martinez returned forty-five minutes later. § 87(2)(b) told Officer Martinez that he needed his medication and if he was permitted to call his sister, she could bring the medication to the stationhouse. Officer Martinez informed § 87(2)(b) that he could not allow him to medicate himself; he would have to go to the hospital. § 87(2)(b) told Officer Martinez that he wanted to go to the hospital. Officer Martinez replied "No problem we will take care of that soon." § 87(2)(b) stated that he felt that Officer Martinez did not believe that he was a transplant recipient, so he told him the name and phone number of his doctor and told him to call and verify the information. He stated that he even went as far as offering to show Officer Martinez his transplant scar. Officer Martinez turned his back to § 87(2)(b) and began to do something. Officer Martinez told § 87(2)(b) to give him a few minutes. Officer Martinez left holding cell area.

Officer Martinez returned an hour later and told § 87(2)(b) that if he wanted to go to the hospital he could take himself. (*Allegation F*) § 87(2)(b) and § 87(2)(b) were released. When § 87(2)(b) was handed his belongings, he noticed a summons for riding his bicycle on the sidewalk. (*Allegations H and I*) He asked Officer Martinez if the reason they were detained was so that they could be issued summonses. At this time, § 87(2)(b) told Officer Martinez that he never rode his bicycle on the sidewalk. Officer Martinez replied "consider yourself lucky that is all you got." § 87(2)(b) and § 87(2)(b) proceeded to leave the stationhouse and as they were leaving Officer Martinez said, "stay off those rooftops." § 87(2)(b) stated that he did not know what Officer Martinez meant when he made that comment.

It took § 87(2)(b) and § 87(2)(b) an hour to get back to § 87(2)(b)'s sister's house because § 87(2)(b) was feeling ill. When they arrived home, § 87(2)(b) took his medication and § 87(2)(b) went to work. § 87(2)(b) began to experience nausea, dizziness and pain in his incision and decided to go to the § 87(2)(b) emergency room. A series of test were conducted on § 87(2)(b) and then he was released with the instructions to return to the hospital if his symptoms worsened. When § 87(2)(b) returned to his sister's house, he spoke to § 87(2)(b) about the incident and was informed that Officer Murphy had told § 87(2)(b) that a robbery at knifepoint had occurred and that he and § 87(2)(b) fit the descriptions.

During the interview, § 87(2)(b) stated that although he was not riding his bicycle on the sidewalk, he was going to pay the summons because he is a student that lives in California and he could not come back to New York to go to court to dispute the summons.

Results of Investigation

Victim Testimony

§ 87(2)(b) a § 87(2)(b) year old black man, was interviewed at the CCRB on August 23, 2004. (Encl. 6 (a-e)) § 87(2)(b) is § 87(2)(b)'s cousin. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that Officer Martinez approached him and § 87(2)(b) and asked them if they had any weapons, which they denied. § 87(2)(b) stated that he was wearing dark blue sweat pants with a yellow long sleeved shirt. Officer Murphy told § 87(2)(b) that there was a robbery at knifepoint a couple of blocks away and he and § 87(2)(b) fit the description. Officer Murphy then frisked § 87(2)(b) and asked him for identification. § 87(2)(b) had a pouch on the rear of his bicycle and he told Officer Murphy that his identification was inside the pouch. Officer Murphy went inside the pouch to obtain § 87(2)(b)'s identification. § 87(2)(b)'s pouch contained his cellular phone, car keys, money and his expired driver's license.

§ 87(2)(b) stated that he and § 87(2)(b) were asked if were they in that area or if they committed the robbery. § 87(2)(b) denied that in the 63rd Precinct stationhouse he told Officer Martinez that he did not ride his bicycle on the sidewalk. § 87(2)(g) Officer Martinez told him and § 87(2)(b) not to "ride their bicycles on rooftops." During his CCRB interview, § 87(2)(b) informed the investigator that although he was not riding his bicycle on the sidewalk, he was going to pay his summons.

Officer Testimony

Officer Robert Martinez was interviewed at the CCRB on November 4, 2004. (Encl. 7 (a-g)) On August 6, 2004, Officer Martinez was working a 9:30 PM by 6:05 AM tour assigned to Patrol Sectors A and D of the 63rd Precinct. Officer Martinez and his partner Officer Murphy were dressed in uniform and assigned to a marked RMP #4174. At approximately 1:45 AM, Officer Martinez and Officer Murphy received a radio call that there were two males on a rooftop at Avenue P and Flatbush Avenue, Brooklyn and a possible crime was in progress. There was a burglary crime pattern in that area and there had been a pattern of burglaries in commercial establishments using the roofs as entry.

The person that called 911 did not provide a contact number and when the officers responded the two suspects were not on the scene. At approximately 2:15 AM, Officer Martinez and Officer Murphy received a call over the police radio to respond to § 87(2)(b) for a burglary in progress. This address was directly behind the location where the earlier call for a possible crime in progress was. When they arrived at the location the suspects had fled. The person that called 911 described one of the suspects as tall and heavyset male wearing a dark long sleeve shirt. The other suspect was described as short male wearing a dark long sleeve shirt. According to the complainant, both suspects were black males.

At approximately 2:45 AM, Officer Martinez and Officer Murphy were driving on Flatbush Avenue conducting a canvass when they observed § 87(2)(b) and § 87(2)(b) riding their bicycles on the sidewalk on Flatbush Avenue and Avenue J. § 87(2)(b) and § 87(2)(b) looked suspicious because § 87(2)(b) was wearing a long sleeve shirt in August and he was wearing work gloves. In addition, Officer Martinez stated from his experience working for Anti-Crime and his history of making burglary arrest, most burglary suspects travel on bicycles. At this time, the officers stopped § 87(2)(b) and § 87(2)(b) for riding their bicycles on the sidewalk, and because they fit the description of the two burglary suspects, with the exception that § 87(2)(b) was wearing a short sleeved shirt at the time he was stopped and because they were within the proximity of where the attempted burglary took place. When § 87(2)(b) and § 87(2)(b) asked why they were being stopped, Officer Martinez told them that they were stopped because they were riding their bicycles on the sidewalk. Officer Martinez stated for his safety and Officer Murphy's safety he did not tell § 87(2)(b) and § 87(2)(b) that they fit the descriptions of burglary suspects.

As Officer Martinez and Officer Murphy began to exit their vehicle, either § 87(2)(b) or § 87(2)(b) made a movement towards his waistband. Officer Martinez stated that he did not know if § 87(2)(b) or § 87(2)(b)

was adjusting a weapon and he hesitated to exit the vehicle. It should be noted that Officer Martinez made this comment after the investigator asked him if he saw something to cause him to feel that his safety was threatened. The officers approached a nervous looking § 87(2)(b) and § 87(2)(b) and Officer Martinez frisked § 87(2)(b) and/or § 87(2)(b) for the officers' safety because Officer Martinez considered burglary a violent crime. Neither frisk yielded any weapons or burglary tools. While § 87(2)(b) and § 87(2)(b) were frisked, Officer Martinez did not recall seeing any scars or distinguishing marks on § 87(2)(b) or § 87(2)(b). He did not recall asking § 87(2)(b) or § 87(2)(b) if he had a scar from being shot. Officer Martinez denied that § 87(2)(b) told him that he was a kidney transplant recipient and that he needed to take his medication.

§ 87(2)(b) and § 87(2)(b) were separated and Officer Martinez questioned § 87(2)(b) while Officer Murphy questioned § 87(2)(b). Officer Martinez asked § 87(2)(b) what they were doing and § 87(2)(b) told him that he and § 87(2)(b) went to Duane Reade to buy shampoo or deodorant. Officer Martinez did not ask § 87(2)(b) to see a receipt from Duane Reade. Officer Martinez asked § 87(2)(b) where he lived and § 87(2)(b) told Officer Martinez an address that was far away from where he was stopped. Officer Martinez felt that it was implausible that § 87(2)(b) and § 87(2)(b) were so far away from their home shopping for shampoo and deodorant at that hour. § 87(2)(b) and § 87(2)(b) were asked for identification. § 87(2)(b) had out of state identification and Officer Martinez asked him where he was staying in Brooklyn. § 87(2)(b) had a New York Driver's License but the address was at the other end of Brooklyn. § 87(2)(b) and § 87(2)(b) had a backpack in their possession and Officer Martinez frisked the backpack and felt a hard object in the bag. He went into the backpack and found a knife, a black hooded sweatshirt and items in a Duane Reade bag. § 87(2)(b) or § 87(2)(b) explained that the knife was used for work. Officer Martinez never indicated his reason for frisking the backpack.

An additional unit was requested and responded to the scene with the complainant. Officer Martinez did not recall who requested the additional unit or which officers responded. A show up was conducted and the complainant "basically" identified § 87(2)(b) and § 87(2)(b) but the complainant's husband told her that she could not be sure because she did not see their faces. He stated that the complainant was ninety percent certain that § 87(2)(b) was the person that she saw jump off the roof, but was afraid that the suspects might come back. Because § 87(2)(b) was not wearing a long sleeve shirt at the time of the show up the complainant was not positive if he was the other person that she saw on the rooftop. Because the complainant could not positively identify § 87(2)(b) and § 87(2)(b) Officer Martinez stated that he decided to arrest § 87(2)(b) and § 87(2)(b) to conduct a warrant check and then to issue summonses for § 87(2)(a) 160.50. Officer Martinez denied that § 87(2)(b) and § 87(2)(b) were arrested as burglary suspects. He stated that § 87(2)(b) and § 87(2)(b) were only taken to the precinct to see if they had any warrants.

§ 87(2)(b) and § 87(2)(b) were handcuffed. Officer Martinez did not recall if he handcuffed § 87(2)(b) or § 87(2)(b). § 87(2)(b) and § 87(2)(b) did not ask why they were being arrested and Officer Martinez found this strange. § 87(2)(b) and § 87(2)(b) were transported to the precinct in Officer § 87(2)(b) and Officer Murphy's vehicle. Officer Martinez did not recall if both bicycles were transported in his vehicle. He stated that no other police vehicles responded to the scene. Officer Martinez did not recall how long they were on the street before § 87(2)(b) and § 87(2)(b) were transported to the precinct.

Inside the stationhouse, § 87(2)(b)'s and § 87(2)(b)'s property was taken but not vouchered. They were photographed, logged in and placed in the cell until a warrant check was conducted. At this time, Officer Martinez stated that he told § 87(2)(b) and § 87(2)(b) that they fit the description of burglary suspects. Officer Martinez told them that they were arrested § 87(2)(a) 160.50 and they would be issued summonses after their warrant checks came back negative. Officer Martinez denied that § 87(2)(b) and § 87(2)(b) denied riding their bicycles on the sidewalk. Officer Martinez denied that § 87(2)(b) told him that he needed to take medication at anytime. Officer Martinez stated that police officers cannot administer any medication, or are officers allowed to permit the prisoners to medicate themselves or have a family member bring medication. He stated if § 87(2)(b) had told him that he needed to take medication, he would have called EMS for § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) were issued summonses § 87(2)(a) 160.50 and were released. Officer Martinez denied telling § 87(2)(b) and § 87(2)(b) to stay off rooftops upon their release.

Officer James Murphy's Statement

Officer James Murphy was interviewed at the CCRB on November 4, 2004. (Encl. 8 (a-e)) On August 6, 2004, Officer Murphy was working a 9:30 PM by 6:05 AM tour assigned to Patrol Sectors A and D of the 63rd Precinct. Officer Murphy and his partner Officer Martinez were dressed in uniform and assigned to an unspecified marked RMP. § 87(2)(b), § 87(2)(g)

Officer Murphy stated that he and Officer Martinez stopped § 87(2)(b) and § 87(2)(b) on Flatbush Avenue and Avenue J, Brooklyn because they were riding their bicycles on the sidewalk. Once he and Officer Martinez approached § 87(2)(b) and § 87(2)(b) they realized that § 87(2)(b) and § 87(2)(b) fit the descriptions of burglary suspects from an earlier radio call of two black males wearing dark sweatshirts, on a rooftop about five blocks away. Once it was determined that § 87(2)(b) and § 87(2)(b) fit the description of the burglary suspects, for their safety the officers frisked § 87(2)(b) and § 87(2)(b). Officer Murphy did not recall which person he frisked. Officer Murphy denied that any weapons were found on § 87(2)(b) and § 87(2)(b). Officer Murphy did not recall any scars on § 87(2)(b) or § 87(2)(b). He did not recall § 87(2)(b) telling him that he was a kidney transplant recipient and that he needed to take medication.

Officer Murphy stated that § 87(2)(b) or § 87(2)(b) had a duffel bag or a book bag in their possession and Officer Martinez searched the duffel bag or book bag because it was heavy and they were looking for burglary tools. Officer Murphy did not indicate that Officer Martinez asked for or was given permission to search the bag. The only items that the officers found in the bag were gloves and a sweatshirt, which they thought were suspicious because they were inappropriate for the weather. The officers did not find any burglary tools or weapons.

After the show-up yielded negative results, it was decided that § 87(2)(b) and § 87(2)(b) would be taken to the precinct to conduct a warrant check and to issue them summonses § 87(2)(a) 160.50. Because either § 87(2)(b) or § 87(2)(b) had an out of state identification card, Officer Murphy stated that he also wanted to get § 87(2)(b)'s or § 87(2)(b)'s New York address in case there was a break-in later in the morning.

Inside the stationhouse, § 87(2)(b)'s and § 87(2)(b)'s property was taken from them and they were placed in a cell. Warrants checks were conducted on § 87(2)(b) and § 87(2)(b) and ESU went to check the roof of the building that was believed to have been burglarized. Officer Murphy did not have much contact with § 87(2)(b) and § 87(2)(b) inside the stationhouse because he was out in the field with ESU.

§ 87(2)(b) and § 87(2)(b) were inside the stationhouse for approximately forty minutes and he did not recall § 87(2)(b) stating that he had to take medication anytime while he was in custody. § 87(2)(b) and § 87(2)(b) were issued a summons for riding their bicycles on the sidewalk and released. Officer Murphy did not recall § 87(2)(b) or § 87(2)(b) disputing the summonses or denying that they were riding their bicycles on the sidewalk. He stated that § 87(2)(b) and § 87(2)(b) left the precinct. Officer Murphy denied that he or Officer Martinez told § 87(2)(b) and § 87(2)(b) to "stay off rooftops."

Officer Delens Cadichon's and Officer Olatutu Erinoshon's Statements

Officer Olatutu Erinoshon was interviewed at the CCRB on December 14, 2004. (Encl. 9 (a-f)) **Officer Delens Cadichon** was interviewed at the CCRB on January 18, 2005. (Encl. 10 (a-c)) On August 6, 2004, Officer Erinoshon and Officer Cadichon were working a 11:15 PM by 7:50 AM tour assigned to Patrol Sectors C and E of the 63rd Precinct. Officer Erinoshon and Officer Cadichon were interviewed because they responded to the location after § 87(2)(b) and § 87(2)(b) were stopped.

Officer Erinoshon stated that when she and Officer Cadichon arrived at the scene Officer Martinez and Officer Murphy had stopped § 87(2)(b) and § 87(2)(b) as potential burglary suspects. She stated that there were several patrol cars at the scene. Officer Erinoshon stated that § 87(2)(b) and § 87(2)(b) were standing on the sidewalk with their bicycles. She did not recall if § 87(2)(b) or § 87(2)(b) was handcuffed. Officer Erinoshon did not notice any scars or injuries on § 87(2)(b) or § 87(2)(b) nor did she recall what § 87(2)(b)

§ 87(2)(b) or § 87(2)(b) was wearing at the time of the incident. Officer Erinosho did not recall if a show-up was conducted. She stated that she did not have a conversation with § 87(2)(b), § 87(2)(b) or any of the officers. Officer Erinosho stated that a bicycle was placed in the trunk of her and Officer Cadichon's vehicle. When she and Officer Cadichon arrived at the stationhouse, Officer Cadichon took the bicycle into the stationhouse.

Officer Delens Cadichon had no recollection of the incident. When shown photographs of § 87(2)(b) or § 87(2)(b) Officer Cadichon did not recognize § 87(2)(b) or § 87(2)(b).

Medical Records

§ 87(2)(b) told the investigator that on August 6, 2004, he went to the emergency room at the § 87(2)(b) because he was feeling ill. The investigator received copies of § 87(2)(b)'s medical records from § 87(2)(b). However, § 87(2)(b)'s medical records did not indicate that he went to the hospital on August 6, 2004, in fact there were no medical records for § 87(2)(b) for the year 2004. § 87(2)(b)'s medical records did corroborate that § 87(2)(b) was a kidney transplant recipient.

Police Documents

SPRINTS (Encl. 11 (i-l)): According to SPRINT § 87(2)(b), on August 6, 2004 at approximately 1:33 AM, there was a report of a possible crime in progress on the rooftop of § 87(2)(b) on Avenue P, Brooklyn. At approximately 1:37 AM, Officer Martinez and Officer Murphy, who were assigned to Sector 63A, responded at the location and at 1:55 AM, marked the job as unfounded. According to SPRINT § 87(2)(b), on August 6, 2004 at approximately 2:09 AM, there was a report of a burglary in progress at § 87(2)(b), Brooklyn. The suspects were described as black males wearing all black and one of the suspects was tall. At approximately 2:28 AM, Officer Martinez and Officer Murphy marked the job as suspects gone on arrival. According to SPRINT § 87(2)(b), on August 6, 2004 at approximately 2:35 AM, Officer Martinez and Officer Murphy stopped two males at East 35th Street and Flatbush Avenue, Brooklyn for a possible crime. At approximately 2:56 AM, Officer Martinez and Officer Murphy arrested the two males.

Prisoner Pedigree Card (Encl. 11(m)): § 87(2)(b)'s pedigree card indicates that Officer James Murphy arrested him on August 6, 2004. The crime or violation that § 87(2)(b) was being charged with was not indicated. In addition, § 87(2)(b)'s pedigree card indicates that he never requested medical attention, he refused medical attention and that he does not have any disabilities.

Command Log (Encl. 11 (n-v)): According to 63rd Precinct Command Log, on August 6, 2004 at approximately 3:20 AM, § 87(2)(b) and § 87(2)(b) were brought into the stationhouse by Officer Martinez after they were arrested on the corner of Flatbush Avenue and East 35th Street and the corner of Flatbush Avenue and Avenue J, both in Brooklyn. The command log does not indicate what crime or violation § 87(2)(b) and § 87(2)(b) were being charged with. § 87(2)(b) and § 87(2)(b) were released at 4:50 AM with Summons § 87(2)(b) and Summons § 87(2)(b) respectively.

Warrant Check (Encl. 11 (x)): On August 6, 2004 at approximately 3:35 AM, a warrant check was conducted on § 87(2)(b). On the same date at approximately 3:40 AM and at 11:36 AM, a warrant check was conducted on § 87(2)(b). The warrant log did not indicate which officer conducted the warrant checks on § 87(2)(b) and § 87(2)(b).

Summonses (Encl. 7 (d)): On August 6, 2004 at 2:56 AM, Officer Martinez issued Traffic Summons § 87(2)(b) to § 87(2)(b) § 87(2)(a) 160.50. In addition, on August 6, 2004 at 2:56 AM, Officer Martinez issued Traffic Summons § 87(2)(b) to § 87(2)(b) § 87(2)(a) 160.50.

Disposition of Summonses

On February 18, 2005, § 87(2)(b) paid his summons. As of April 6, 2005, § 87(2)(b) has not paid his summons.

Complainant's and Victim's Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Officers' Substantiated CCRB History

Officer Robert Martinez has one substantiated CCRB case #200205713 for Discourtesy (Word) which resulted in Officer Martinez receiving schedule A command discipline. Officer James Murphy does not have any substantiated CCRB allegations.

Conclusions and Recommendations

Basis for Officer Identification

Officer Martinez was identified from his nametag and the summonses that he issued to § 87(2)(b) and § 87(2)(b) at the time of the incident. Officer Murphy was identified from the 63rd Precinct roll call as being Officer Martinez's partner on the day of the incident. During their CCRB interviews, Officer Martinez and Officer Murphy confirmed their involvement in this case. Officer Erinoshio and Officer Cadichon were identified from the 63rd Precinct roll call as being assigned to Sector C, which responded to the location where § 87(2)(b) and § 87(2)(b) were stopped. During their CCRB interview, Officer Erinoshio and Officer Cadichon confirmed that they were assigned to Sector C of the 63rd Precinct on the day of the incident.

Undisputed Facts

It is not in dispute that Officer Martinez issued § 87(2)(b) and § 87(2)(b) summonses for riding their bicycles on the sidewalk on Flatbush Avenue and Avenue J, Brooklyn. Nor is it in dispute that § 87(2)(b) had in his possession products that he had purchased from Duane Reade.

Disputed Issues

§ 87(2)(b) and § 87(2)(b) denied riding their bicycles on the sidewalk. Officer Martinez and Officer Murphy stated that § 87(2)(b) and § 87(2)(b) were riding their bicycles on the sidewalk, which was the reason that § 87(2)(b) and § 87(2)(b) were stopped. § 87(2)(b) also alleged that Officer Martinez searched his pockets. Officer Martinez stated that he frisked § 87(2)(b) § 87(2)(b), § 87(2)(g) § 87(2)(b) and § 87(2)(b) stated that § 87(2)(b) asked Officer Martinez several times for medical treatment because he needed to take his medication. § 87(2)(b) and § 87(2)(b) stated that Officer Martinez ignored § 87(2)(b)'s request. Officer Martinez and Officer Murphy denied that § 87(2)(b) asked for medical treatment.

Credibility Assessment

§ 87(2)(g)

Pleading Allegations

§ 87(2)(b), § 87(2)(g)

Allegation A: At Flatbush Avenue and Avenue J, Officer Robert Martinez stopped and questioned

§ 87(2)(b)

Allegation B: At Flatbush Avenue and Avenue J, Officer James Murphy stopped and questioned

§ 87(2)(b)

According to § 87(2)(b) and § 87(2)(b) they were riding their bicycles in the street when they were stopped and questioned by Officer Martinez and Officer Murphy. Officer Martinez and Officer Murphy stated that § 87(2)(b) and § 87(2)(b) were stopped and questioned because they were riding their bicycles on the sidewalk and because they fit the description of burglary suspects. According to the SPRINT there were two black males attempting to burglarize a business in close proximity to where § 87(2)(b) and § 87(2)(b) were stopped. § 87(2)(b) and § 87(2)(b) were stopped approximately fifteen minutes after Officer Martinez and Officer Murphy received the description. § 87(2)(b), § 87(2)(g)

Allegation C: At Flatbush Avenue and Avenue J, Officer Robert Martinez searched § 87(2)(b)
Allegation D: At Flatbush Avenue and Avenue J, Officer James Murphy frisked § 87(2)(b)

§ 87(2)(b) stated that Officer Martinez searched inside his pockets. § 87(2)(b) stated that Officer Murphy frisked him. Officer Martinez and Officer Murphy admitted that they frisked § 87(2)(b) and § 87(2)(b). Both officers stated that they observed § 87(2)(b) and § 87(2)(b) whom fit the descriptions of burglary suspects riding their bicycles on the sidewalk. The officers stated that § 87(2)(b) and § 87(2)(b) were frisked because they fit the descriptions of burglary suspects, which Officer Martinez feels is a violent felony. Officer Martinez further stated that when he was exiting his vehicle he observed § 87(2)(b) or § 87(2)(b) make a movement towards his waistband, which caused him to frisk § 87(2)(b) § 87(2)(g).

According to *Kamins Search and Seizure*, an officer must have reasonable suspicion to believe that a suspect has committed a crime and a reasonable suspicion that the suspect is armed and dangerous or is believed to have committed a violent crime. According to the Department of Justice, violent crimes are murder, rape, robbery, aggravated assault and simple assault. § 87(2)(b), § 87(2)(g)

Allegation E: At Flatbush Avenue and Avenue J, Officer Robert Martinez arrested § 87(2)(b)
and § 87(2)(b) and later at the 63rd Precinct stationhouse issued them summonses.

According to Officer Martinez and Officer Murphy, after a show-up did not positively identify § 87(2)(b) and § 87(2)(b) as the burglary suspects, they were arrested for riding their bicycles on the sidewalk. The officers stated that they wanted to conduct warrant checks on § 87(2)(b) and § 87(2)(b) and upon a negative warrant check, § 87(2)(b) and § 87(2)(b) would be released with summonses. Warrant checks were conducted on § 87(2)(b) and § 87(2)(b) at 3:35 AM and 3:40 AM respectively. However, § 87(2)(b) and § 87(2)(b) were not released with summonses until 4:50 AM.

The officers denied that § 87(2)(b) and § 87(2)(b) were arrested as burglary suspects. However, Officer Murphy stated that while § 87(2)(b) and § 87(2)(b) were being detained at the stationhouse, he went with the Emergency Services Unit to check the location where the attempted burglary occurred. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) denied riding their bicycles on the sidewalk. Officer Martinez and Officer Murphy stated that they observed § 87(2)(b) and § 87(2)(b) riding their bicycles on the sidewalk. § 87(2)(b), § 87(2)(g)

Allegation F: Officer Robert Martinez did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) stated that § 87(2)(b) told Officer Martinez numerous times that he needed to take medication and that § 87(2)(b) asked for medical treatment so he could receive his medication. § 87(2)(b) and § 87(2)(b) stated that Officer Martinez told § 87(2)(b) to wait a few minutes. § 87(2)(b) never received medical treatment. Officer Martinez and Officer Murphy denied that § 87(2)(b) told Officer Martinez that he needed to take medication or that § 87(2)(b) asked for medical treatment. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: